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U.S. Citizenship
and Immigration
Services

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FILE:

EAC 02 258 52288

Office: VERMONT SERVICE CENTER

Date: APR 27 2005

IN RE:

Petitioner:
Beneficiary:

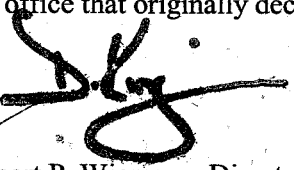
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to
Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner asserts that diplomats keep a low profile and that the director failed to consider all of the evidence submitted.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available ... to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability in an unspecified occupation. The law requires that the petitioner be seeking to enter the United States to continue in his area of expertise. Thus, the petitioner must establish not only that he has extraordinary ability in a field but also that he seeks to be employed in that field. The regulation at 8 C.F.R. § 204.5(h)(5) provides:

Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments

such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

The petitioner did not complete Part 6 of the petition regarding his proposed employment. This omission is significant, because the petitioner's academic credentials and teaching experience are in the field of physics while his most notable career achievements are in the field of international affairs. The two fields are not related. The petitioner failed to provide letters from prospective employers, prearranged commitments such as contracts, or even his own statement detailing the exact nature of his intended employment. The director expressed concern that the petitioner had not identified his intended occupation. The petitioner's only response on appeal, however, is that the letters demonstrate how he will substantially benefit the United States. None of the subsequent quotes from the petitioner's letters, however, explain whether the petitioner will be working in the field of physics or international affairs.

The petitioner's recent volunteer employment in the United States suggests that the petitioner intends to teach physics or engineering. As such, he must demonstrate extraordinary ability in one of those fields. In the interest of full consideration, however, we will also consider the evidence of his diplomatic career. We note, however, that even if we were to conclude that the petitioner had demonstrated extraordinary ability as a diplomat, and we do not, the petition would not be approvable as the record lacks evidence that the petitioner intends to teach international affairs or otherwise work in that field.

On appeal, the petitioner appears to assert that merely attaining the rank of ambassador demonstrates eligibility for the classification sought. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. As the rank of ambassador is not a major international recognized award, such as a Nobel Peace Prize for example, the petitioner must meet three of the regulatory criteria discussed below through the submission of "extensive documentation."

Moreover, supplementary information at 56 Fed. Reg. 60899 (November 29, 1991) states:

The Service disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard. . . . A blanket rule for all major league athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

We find that this reasoning is applicable to the petitioner's field. Each nation appoints ambassadors and, if part of the British Commonwealth, high commissioners, to the hundreds of other countries in the world and replaces those ambassadors every few years. We find that merely attaining the rank of ambassador in the diplomatic service, while a consideration, is not, by itself, evidence of eligibility for this restrictive classification.

At no point has the petitioner clearly explained which criteria he claims to meet. We will address all of the criteria below.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner did not submit any evidence of nationally or internationally recognized prizes or awards either in physics or international affairs. Rather he submitted recognition for academic achievements, such as honor roll certification. Such recognition is not an award for excellence in the field as academic study is not a field of endeavor, but training for a future field of endeavor. Moreover, the most experienced experts in the field do not compete for such recognition. On appeal, the petitioner asserts that the "awards" available in the diplomatic service are promotions to positions of greater responsibility.

Clearly, this criterion is applicable to the field of physics. As such, we would not accept comparable evidence to meet this criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(4), which allows comparable evidence where a criterion is not readily applicable to a field. Whether or not this criterion is applicable to the field of international affairs, we do not find that promotions are comparable to awards or prizes for excellence. In light of the above discussion, the petitioner has not established that he meets this criterion. We acknowledge that the nature of the petitioner's positions and responsibilities are relevant; however, they relate to another criterion and will be discussed below.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner claims to be a member of [REDACTED] a physics honor society that "requires excellent academic achievements as a condition of membership," and the Association of Retired Ambassadors. The petitioner states:

The membership [in the Association of Retired Ambassadors] is restricted to only the high achievers in the diplomatic field i.e. to those who have risen to highest level of their diplomatic careers. Even non-diplomatic ambassadors and political appointees cannot qualify to become a member.

The director concluded that these memberships were insufficient.

The petitioner submitted his membership in the Wright State University [REDACTED]. The petitioner did not submit the bylaws of [REDACTED] or other official documentation establishing the society's membership requirements. It appears, however, that the petitioner is a member of a local chapter of the society. Thus, national or international experts in the field did not judge his achievements. Moreover, academic achievements, such as grade point average, are not outstanding achievements in the field.

The record does not contain evidence that the petitioner is a member of the Association of Retired Ambassadors. The petitioner also failed to submit evidence supporting his assertion that the association is exclusive. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft*, 14 I&N Dec. 190, 193-194 (Reg. Comm. 1972), broadened in *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) and *Matter of Ho*, 22 I&N Dec. 206, 211 (Comm. 1998). Moreover, while the petitioner's positions in the diplomatic service will be considered below, we are not persuaded that an association for all retired diplomatic ambassadors is restricted to only those with outstanding achievements in the field as judged by national or international experts in the field. In light of the above discussion, the petitioner has not established that he meets this criterion.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The director concluded that the record did not include any "news articles discussing [the petitioner's] extraordinary ability and reputation." As the petitioner did submit news articles, however, more discussion is warranted.

The petitioner was pictured presenting his credentials to the Ghanaian president in the *Ghana Times* in July 1992. July 1992 press releases in the *Pakistan Times* and the *Pakistan Observer* also noted that the petitioner would be overseeing the Pakistani diplomatic mission in Togo at the same time. Finally, the *Ghana Times* reported the petitioner's final meeting with the President of Ghana prior to the petitioner's imminent departure from Ghana in 1996. Press releases are not as persuasive as independent journalistic coverage in demonstrating national or international acclaim. The petitioner has not demonstrated that these articles were featured as news coverage of the petitioner. For example, a section in a government-run newspaper¹ that typically covers the daily activity of the President is not indicative of the petitioner's personal acclaim. Regardless, the articles submitted do not represent a pattern of sustained national or international acclaim. Thus, the petitioner has not established that he meets this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The petitioner has not submitted any evidence relating to this criterion in either the field of physics or the field of international affairs.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The director stated that the petitioner had "excelled in several fields as a researcher, diplomat, teacher etc. while making original contributions to each of these fields." The director then concluded that the record "does not establish that [the petitioner] has been recognized nationally or internationally for a sustained time period in any of these endeavors." This discussion is ambiguous as to whether the director found that the petitioner met this criterion or not. We note that this criterion requires that the alien have made not only original contributions, but contributions of major significance to the field. As the director did not use the phrase "major significance," it appears that the director concluded that the petitioner's contributions to the field were insufficient to meet this criterion. Regardless of the director's findings, we find that the petitioner has not established that he has made any contributions to the field of physics or that he has made contributions of major significance to the field of international affairs.

In evaluating the evidence relating to this criterion, evidence relating to specific contribution and their influence in the field is more persuasive than vague attestations of general contributions with little detail as to how the

¹ The *Ghana Times* is run by the Ghanaian government according to <http://www.countriesquest.com/africa/ghana/economy/communications.htm>.

field has been impacted. We will evaluate the evidence as it relates first to the field of physics and then to the field of international affairs.

Prior to obtaining his Ph.D., the petitioner worked as a research assistant in the Physics Department at the American University of Beirut for three months in 1962. [REDACTED] the petitioner's supervisor, asserts that the petitioner studied literature relating to experiments in atomic physics and the design of electronics equipment to be built [REDACTED] but does not indicate that this work influenced the field of physics. A fellow student provides general praise of the petitioner's graduate teaching abilities.

The petitioner obtained his Ph.D. in physics from The Ohio State University in 1969. In an unsigned letter that is not on university letterhead, [REDACTED] an employment verification clerk at The Ohio State University, confirms the petitioner's graduate teaching experience, but does not evaluate the petitioner's work. After obtaining his degree, the petitioner briefly worked for the U.S. Air Force Flight Dynamics Laboratory through The Ohio State University. [REDACTED] a staff scientist, asserts that the petitioner "materially assisted the Laboratory by designing contoured nozzles, surveying the technical field of electrostatic probe theory in flowing plasmas, assisting in the redesign and instrumentation of FGL facilities and various other tasks outlined" in the contract with The Ohio State University.

It is inherent to the field of physics to make original observations and design new products. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance to the field as a whole. Captain Couch does not assert that the petitioner's designs constitute a contribution of major significance that has impacted the field of electrostatic probe theory. Moreover, Captain Couch's letter is dated December 31, 1970, 32 years before the petition was filed. A petitioner must demonstrate sustained acclaim as of the date of filing.

[REDACTED] Chair of the Physics Department Wright State University confirms the petitioner's employment there from 1969 to 1971, but does not evaluate the petitioner's work. [REDACTED] Chair of the Geological Sciences Department at the university, provides general praise of the petitioner's teaching abilities and character. The petitioner submits a 1973 letter from [REDACTED] College at the University of Mosul, confirming that the petitioner has been an assistant professor at the university since 1971 and recommending him as an instructor for a summer school course. [REDACTED] asserts that the petitioner and his students would benefit from the petitioner's participation, but does not identify or discuss any specific contributions to the field of physics made by the petitioner.

After 1973, the petitioner did not teach again until 2001, at which time he volunteered to facilitate "an engineering new student seminar course" at the City College of New York. This evidence does not establish that the petitioner has made contributions to the field of physics. It can be expected that a physicist making contributions of major significance to his field would have a distinguished publication record and references from the most prominent physicists in the country who have applied his results. Such evidence is lacking in this case.

In a letter dated October 21, 1996, [REDACTED] Director of Administration and Finance for the Organization of the Islamic Conference (OIC), asserts that the petitioner was employed there as Assistant Director at the General Secretariat of the OIC from May 1985 to September 1988. [REDACTED] asserts that the petitioner "always won the appreciation and respect of his colleagues throughout the period he worked in this Organization."

[REDACTED] of the Department of Peacekeeping Operations at the United Nations asserts that the petitioner inspired the confidence of his peers, had an understanding of intricate political issues, and high competence in man management. While these qualities are obviously important in the petitioner's field, Mr. Mahdi does not identify a specific contribution to the field or explain its significance.

The 1996 article in the *Ghana Times* reporting the departure of the petitioner indicates that the President of Ghana "expressed the gratitude of the government for the assistance the Pakistani Government continued to offer towards the development of Ghana." The Special Assistant to the President "praised [the petitioner] for his efforts in strengthening the relationship between Ghana and Pakistan." Nothing about such general praise for an outgoing ambassador suggests that the petitioner's work in Ghana constitutes a contribution of major significance to the field of international affairs or diplomacy. The petitioner also submitted letters of appreciation upon his departure from the Foreign Service. Once again, these letters appear to constitute general appreciation for service to one's country issued to most if not all retiring ambassadors rather than recognition for specific contributions of major significance to the field of diplomacy.

We will not infer contributions of major significance from a successful career. The statutory requirement for extensive documentation requires that the petitioner document specific contributions and their significance. The record is absent evidence that the petitioner has lectured in the field of international affairs, authored widely cited articles or otherwise influenced diplomacy in the Ministry of Foreign Affairs.

For the reasons discussed above, the record does not establish that the petitioner has contributed to the field of physics or that he has made a contribution of major significance to the field of international affairs.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner has not submitted any evidence relating to this criterion in either the field of physics or international affairs. While the petitioner submitted an invitation to author a paper to be presented at a conference on African Studies by the Area Study Centre for Africa, North and South America, the record does not contain any evidence that the petitioner actually authored the paper or that the paper proved influential, such as being widely cited. Thus, the petitioner has not established that he meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

This criterion does not relate to either the field of physics or the field of international affairs.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The petitioner has served as a Pakistani ambassador to Ghana, Togo, and other countries and as a delegate to the OIC. The director, while not directly discussing this criterion, acknowledged that the petitioner had been "entrusted with multifarious responsibilities." We find that the petitioner meets this criterion in the field of international affairs. The record contains no evidence relating to this criterion in the unrelated field of physics.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The director's request for evidence specifically requested evidence relating to this criterion.² In response, the petitioner asserts that while a cabinet member of the OIC, his "salary was commensurate with the position and was higher than paid to the other diplomats of equivalent rank by their respective governments." [REDACTED] The Department of Peacekeeping Operations with the United Nations asserts that the petitioner's OIC position "was a coveted appointment which carried with it an attractive remuneration besides the important political content of the desk." [REDACTED] Director of Administration and Finance for the OIC, confirms the petitioner's position but makes no reference to his salary.

The director concluded that the record did not establish that the petitioner had earned "exceptional fees" either as a diplomat or as an instructor. On appeal, the petitioner references [REDACTED] comments and asserts that international organizations "do pay higher remunerations to attract persons of outstanding quality, just as the pay scales and perks of the United Nations are highly attractive."

The record includes no objective evidence of the petitioner's actual remuneration for his assignment to the OIC such as his employment contract or tax returns. The record also lacks evidence of the pay scale for Pakistan's Foreign Ministry. Without such evidence, we cannot determine whether the petitioner's remuneration was comparable to the most senior level members of the ministry. The record contains no evidence of the petitioner's remuneration as a physics instructor. In light of the above discussion, the petitioner has not established that he meets this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

This criterion is not applicable to either the field of physics or the field of international affairs.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a diplomat or physics instructor to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a diplomat, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

² The director's request inexplicably referenced only three of the ten regulatory criteria. We emphasize that nothing in the regulations requires an alien to meet any specific criterion so long as the alien meets three.